

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

DISCOVER FINANCIAL SERVICES NSA

Docket No. MC2015-3

DISCOVER FINANCIAL SERVICES NSA

Docket No. R2015-2

**RESPONSES OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1, QUESTIONS 1-12**
(November 13, 2014)

The United States Postal Service ("Postal Service") hereby provides its response to Chairman's Information Request ("CHIR") No. 1, Questions 1-12. CHIR No. 1 was issued November 6, 2014. The Postal Service's responses were due by November 13, 2014. Each question contained in CHIR No. 1 is reprinted verbatim and is followed by the Postal Service's corresponding response.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.

Chief Counsel, Pricing and Product Support

Valerie J. Pelton

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-3179, Fax -6187

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

QUESTION 1: Please provide the monthly volumes of First-Class and Standard mail tendered by Discover for the two-year period ending September 30, 2014. First-Class and Standard mail volumes should be separately stated, by category.

RESPONSE 1: For the monthly First-Class Mail ("FCM") and Standard Mail ("SM") volumes tendered by Discover for the two-year period ending September 30, 2014, please see Table 1 filed herewith. The requested categorized volumes are contained in the spreadsheet filed herewith labeled CHIR No. 1_QU 1.xlsx.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

QUESTION 2: In connection with the Commission's 2014 Annual Compliance Determination Report, please provide an analysis of the lessons learned from the prior negotiated service agreement with Discover. Specifically, address: (1) how well the negotiated service agreement achieved its goal of maintaining Discover's total contribution from First-Class Mail and Standard Mail; (2) how well the negotiated service agreement achieved its goal of providing an incentive for growth in net contribution beyond that; (3) the lessons the Postal Service has learned regarding methods for staunching First-Class Mail volume declines; and (4) what efforts the Postal Service has made to develop a net value method with quantitative inputs. Annual Compliance Determination Report at 68-69, March 27, 2014. In addition, please explain how this inquiry affected, if at all, the currently proposed negotiated service agreement.

RESPONSE 2: The lessons learned from the prior NSA with Discover (Docket No. R2011-3) are as follows:

1. Through the implementation of volume thresholds and incentive payments, the Postal Service not only maintained but also increased overall total contribution from FCM and SM over the three-year term of the NSA. Using the baseline volumes filed with the Commission in connection with that NSA as a benchmark, the Postal Service achieved its goal of providing an incentive for growth in net contribution above the baseline volumes as follows:

<u>Class</u>	<u>Incremental Pieces</u>
FCM	(20.5M)
SM	441.7M

Using average Contribution per piece, the respective FCM and SM contributions over the three-year term of the NSA were as follows:

<u>Volume</u>	<u>Contribution (\$)</u>
FCM	(5.2M)
SM	<u>48.6M</u>
Total	43.4M
<u>Less Rebates</u>	<u>(33.4M)</u>
Net Contribution	10.0M

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

2. By providing incentives, the prior NSA enabled the Postal Service to achieve its goal by maintaining the net contribution from the prior three-year period. Based on an analysis of industry performance, we projected that Discover would mail less without the prior NSA, the volume of FCM and SM would have declined and that the resulting net contribution would have declined by almost \$61 million. Not only did the NSA allow that \$61M decline in contribution to be avoided, but, contribution over the 3-year NSA period actually increased by \$10 million for a total benefit of almost \$71M. Through the NSA we retained almost \$61 million in net contribution and generated an additional \$10 million in net contribution. Thus, through the implementation of volume thresholds and incentive payments, the prior NSA resulted in positive contribution¹ over its three-year term as follows:

<u>Class</u>	<u>Contribution (\$)</u>
FCM	12.6M
SM	<u>58.3M</u>
Total	70.9M

3. As a result of the prior NSA, the Postal Service learned that the methods contained in the prior NSA for staunching FCM volume declines were marginally effective. The Postal Service also gained further insight into customer behavior and learned that the methods employed to staunch declining FCM volume may vary for each mailer. The Postal Service also learned that a mailer's behavior is highly affected by the behavior of the mailer's customers, particularly with respect to the acceptance of electronic statements from financial entities. Given this knowledge, we realized that

¹ Based on Before Rate Volumes and Net of Rebates.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

future NSAs should be structured to provide for overall net increases in contribution regardless of the actions taken by a mailer in response to market conditions and/or market response to any one product subset of that mailer's mail volume.

4. The Postal Service is cognizant of the Commission's analysis of the prior Discover NSA contained in the March 27, 2014 Annual Compliance Determination; however, we believe that the net value method employed in the current NSA is better suited to commercial corporate activities. Furthermore, we believe that our innovative quantitative analytical methodology which leverages both volume and revenue thresholds is more reflective of corporate business practices, including but not limited to, companies such as Discover.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

QUESTION 3: 39 C.F.R. § 3010.42(f) requires that a projected change in the net financial position of the Postal Service as a result of the Agreement be based on accepted analytical principles.

- a. Please confirm that the Postal Service calculates negative \$6,180,863 as the total net value to the Postal Service for its forecasted after-rates volume using the accepted methodology. If not confirmed, please explain.
- b. The accepted methodology applies an elasticity test over a range of possible volume outcomes. Please supplement the Request to conform to this requirement.
- c. 39 C.F.R. § 3010.42(f)(5) requires that if the Postal Service believes the accepted analytical principles are not the most accurate and reliable methodology available, then the Postal Service must provide an explanation for that belief.

Please identify the location in the Postal Service's Request where this information is provided. If such information has not been provided, please supplement the Request to conform to this requirement.

RESPONSE 3:

- a. The Postal Service confirms it calculates negative \$6,180,863 as the total net value to the Postal Service for its forecasted after-rates volume using the Commission's methodology.

Question 3.b. - Response									
	Year 1			Year 2			Year 3		
	Estimated After-Rates Volume	Estimated After-Rates Volume	Estimated After-Rates Volume	Estimated After-Rates Volume	Estimated After-Rates Volume	Estimated After-Rates Volume	Estimated After-Rates Volume	Estimated After-Rates Volume	Estimated After-Rates Volume
Volume Change from Forecast	-10.00%	Forecast	10.00%	-10.00%	Forecast	10.00%	-10.00%	Forecast	10.00%
First-Class Letters									
Eligible Volume	209,368,276	232,631,418	255,894,560	211,998,203	235,553,558	259,108,914	211,998,203	235,553,558	259,108,914
Revenue per Piece:	\$ 0.397	\$ 0.397	\$ 0.397	\$ 0.38	\$ 0.385	\$ 0.385	\$ 0.393	\$ 0.393	\$ 0.393
Cost per Piece:	\$ 0.126	\$ 0.126	\$ 0.126	\$ 0.12	\$ 0.129	\$ 0.129	\$ 0.133	\$ 0.133	\$ 0.133
Marginal Discount:	\$ -	\$ 0.010	\$ 0.010	\$ -	\$ 0.010	\$ 0.009	\$ -	\$ 0.010	\$ 0.010
First-Class Mail Elasticity:	-0.339	-0.339	-0.339	-0.339	-0.339	-0.339	-0.339	-0.339	-0.339
Standard Mail Letters									
Eligible Volume	921,222,578	1,023,580,642	1,125,938,706	932,794,21	1,036,438,091	1,140,081,900	932,794,283	1,036,438,092	1,140,081,901
Revenue per Piece:	\$ 0.227	\$ 0.227	\$ 0.227	\$ 0.22	\$ 0.220	\$ 0.220	\$ 0.393	\$ 0.393	\$ 0.393
Cost per Piece:	\$ 0.108	\$ 0.108	\$ 0.108	\$ 0.11	\$ 0.112	\$ 0.112	\$ 0.115	\$ 0.115	\$ 0.115
Marginal Discount:	\$ -	\$ 0.006	\$ 0.006	\$ -	\$ 0.006	\$ 0.005	\$ -	\$ 0.006	\$ 0.006
Standard Mail Regular Elasticity:	-0.457	-0.457	-0.457	-0.457	-0.457	-0.457	-0.457	-0.457	-0.457
Total Net Value to USPS: (1)	\$ -	\$ (6,180,863)	\$ (6,798,949)	\$ -	\$ (6,167,679)	\$ (6,168,889)	\$ -	\$ (5,723,254)	\$ (6,295,579)
First-Class Mail Net Value	\$ -	\$ (1,768,603)	\$ (1,945,463)	\$ -	\$ (1,753,661)	\$ (1,754,056)	\$ -	\$ (1,790,584)	\$ (1,969,642)
Standard Mail Net Value	\$ -	\$ (4,412,260)	\$ (4,853,486)	\$ -	\$ (4,414,019)	\$ (4,414,834)	\$ -	\$ (3,932,670)	\$ (4,325,937)
Discounts Paid to Discover									
First-Class Mail rebate paid	\$ -	\$ 2,308,764	\$ 2,539,641	\$ -	\$ 2,270,068	\$ 2,270,068	\$ -	\$ 2,314,056	\$ 2,545,461
Standard Mail rebate paid	\$ -	\$ 5,807,544	\$ 6,388,299	\$ -	\$ 5,711,378	\$ 5,711,378	\$ -	\$ 5,822,049	\$ 6,404,254

(1) Estimates are based on Commission methodology.

- b. The supplemental materials requested by the Commission regarding its methodology vis-à-vis an elasticity test over a range of possible volume outcomes is contained in the spreadsheet labeled CHIR No. 1_QU 3b.xlsx.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

- c. The Postal Service believes that the Commission's methodology for determining the Net Value of an NSA fails to take into account how a particular mailer will react to the marginal discount provided. The Class Elasticity employed in the Commission's methodology assumes that all mailers will react to changes in price the same way. We believe this assumption is incorrect as it does not reflect or take into account the actual behavior of the mailer. We believe that the mailing behavior of companies, including but not limited to Discover, is influenced by marginal discounts such as those contained in the present Discover NSA.

In fact, in his statement to the PRC², Mr. Harit Talwar, the Executive Vice President, President –U.S. Cards, and Chief Marketing Officer for Discover Financial Services states:

"It is critical to understand that for us, Standard Mail is not a monopoly product for it operates in a highly competitive market that includes a wide variety of targeted digital channels." ... "So while we have increased our postage spend by 27% over the term of our previous NSA, continued growth of this magnitude is simply not realistic. Indeed, but for this NSA, we would be moving more dollars out of mail and into our digital channels next year and the years after, and the Postal Service would be losing revenue and contribution each year. With this NSA, the Postal Service can retain the profit from our growth of the last several

² Notice of Filing of Statement of Harit Talwar, Chief Marketing Officer of Discover Financial Services, 10/28/2014 (Filing ID: 90559), available at <http://www.prc.gov/Docs/90/90559/Notice%20DFS%20Talwar%20Statement.pdf>. See also Statement of Harit Talwar, Discover Financial Service Executive Vice President, President –U.S. Cards, and Chief Marketing Officer, 10/28/2014, Docket MC2015-3, R2015-2 (Filing ID 90560), available at <http://www.prc.gov/Docs/90/90560/Statement%20of%20Harit%20Talwar%20.pdf>.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

years, and add modest new growth.” ... “In this regard, let me make it clear that Discover did in fact mail more over the term of our previous NSA, than we would have without the contract. ... “Had we not had that NSA, we would have mailed less and reallocated resources to digital channels. Those resources, once allocated to digital channels likely would not have returned to the mail channel.”...“At the outset of each calendar year, we decided that (Barring unforeseen economic developments or other circumstances) we would try to meet or exceed the thresholds of our NSA.”

The decision process that an individual mailer employs to determine how much of its marketing budget is allocated to the mail varies among different types of industries and based on strategic marketing objectives (e.g., brand awareness, customer acquisition, loyalty, communication, etc.). The class elasticity includes mailers from such diverse industries as cataloguers, retail stores, Direct Mail sales and financial institutions. To use the class elasticity implies that all these industries react to price changes identically. Such an occurrence is, at best, unlikely. Absent company-specific elasticities, we rely on marketing intelligence, customer-specific information furnished to us by the customer (as in the case of Discover), and past history (again provided by Discover in relation to their prior NSA).³

³ *Id.* at 6.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

QUESTION 4: If the Commission cannot find that the Agreement “improve[s] the net financial position of the Postal Service through reducing Postal Service costs or increasing the overall contribution to the institutional costs of the Postal Service,” under section 3622(c)(10)(A)(i), see *also* 39 C.F.R. § 3010.42(f), the Commission may also approve the agreement on an alternative ground if it “enhance[s] the performance of mail preparation, processing, transportation, or other functions” under section 3622(c)(10)(A)(ii); see *also* 39 C.F.R. § 3010.42(g). Please identify the location in the Postal Service’s Request where this information is provided. If such information has not been provided, please supplement the Request to conform to this requirement.

RESPONSE 4: With respect to the present NSA, the Postal Service does not anticipate further performance enhancements relating to mail preparation, processing, transportation as virtually all of Discover’s mail is full-service Intelligent Mail barcoded (“IMb”). Discover’s adoption of IMb indicates IMb is commercially beneficial to Discover.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

QUESTION 5: The Agreement contains an implementation date of “December 1, 2014 or a date mutually agreed upon by the Parties....” Request, Attachment B at 2. The Agreement’s effective date is “one (1) business day following the day on which the Commission issues all necessary regulatory approval.” *Id.*

a. Please confirm that the Agreement’s implementation date could occur before its effective date.

b. Please explain whether revenue for and volume from mail tendered before the Agreement’s effective date (but after the implementation date) would constitute part of the Agreement’s year 1 “Annual Revenue Growth Threshold” or “Baseline Volume,” respectively.

RESPONSE 5:

- a. Question 5 implicitly assumes that the implementation and effective dates are not aligned as implementation and effective dates are legally distinct concepts. The “implementation date” is the date on which the discount incentive structure detailed in the NSA will take effect, and volume will begin counting towards the applicable thresholds. The “effective date” is the day after the Commission issues all necessary regulatory approval. The key date in the NSA is the “implementation date”, which defines when key components therein will become active, and also determines the termination date. The “effective date” simply marks the regulatory approval by the Commission.

Although it is possible that the implementation date could occur before the effective date, it was and is the mutual intent of the parties that the implementation and effective dates would be aligned to the extent practicable. Assuming the Commission approves the NSA, the parties intend to implement the NSA the first calendar day of the first month after approval (e.g., the effective date). For an amplification of this response regarding the business reasons for separate

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

implementation and effective dates, the Postal Service is referring the request to Discover.

- b. The revenue for and volume from mail tendered before the effective date (but after the implementation date) would not constitute part of either the year 1 "Annual Revenue Growth Threshold" or "Baseline Volume".

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

QUESTION 6: Please explain how Baseline Volume and Baseline Revenue thresholds will be adjusted pursuant to Article III.E, related to acquisitions or mergers, and Article III.F, related to sales of a division, group, or entity of Discover, of the negotiated service agreement.

RESPONSE 6: As provided in Article III. E of the NSA regarding acquisitions or mergers, the parties mutually agreed the Baseline Volume and Baseline Revenue thresholds will be adjusted upward to the extent that DFS merges with or acquires any entity which mailed either First-Class Mail or Standard Mail or both that would qualify as DFS Eligible Mail, and only if that mail will be counted under this NSA in the future as DFS eligible mail. If any of the acquired entity's mail is kept apart from the mail of DFS and will not be counted as DFS Eligible Mail, then no adjustment need be made until such time as that mail will be integrated with DFS's mail for the purpose of this NSA. DFS agreed to provide full visibility of all FCM and SM of any and every acquired or merged entity (including any and all subsidiaries and affiliates thereof) during the term of the NSA. The adjustment shall be an amount equal to the total FCM presort letter and SM presort letter and Carrier Route letter postage paid by the acquired or merged entity in the twelve (12) months preceding the then-current Agreement Year. Furthermore, all adjustments to the Baseline Volume threshold due to mergers or acquisitions shall be made on a pro-forma quarterly basis beginning in the contract quarter immediately following the date of acquisition or merger unless the mail from the merged or acquired entity is kept apart.

As provided in Article III. F of the NSA regarding sales, the parties mutually agreed that the DFS Baseline Volume and Baseline Revenue thresholds will be adjusted downward to the extent that DFS sells, transfers, divests or otherwise disposes

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

of a division, group or entity that mailed FCM or SM or both. The adjustment shall be an amount equal to the total DFS Eligible Mail volume lost from that particular entity, group or division in the year preceding the sale, transfer, divestiture or disposition. Furthermore, all adjustments of the Baseline Volume threshold due to sale, transfer, divestiture or other disposition shall be made on a pro-forma quarterly basis beginning in the contract quarter immediately following the date of such sale, transfer, divestiture or disposition. The parties expressly agreed that, in the event DFS closes any division, group or entity that mailed FCM or SM or both, DFS shall not be entitled to any upward or downward adjustment whatsoever for that volume of mail affected by any and all division, group or entity closures. Furthermore, the parties expressly agreed that the DFS Baseline Volume stated in the NSA shall remain in effect and DFS shall be responsible for meeting the Baseline Volume threshold regardless of any and all DFS division, group or entity closures of any kind whatsoever.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

QUESTION 7: Please confirm that a rebate paid under the Agreement would not affect the Annual Revenue Growth Threshold for a given year. If not confirmed, please explain.

RESPONSE 7: The Postal Service confirms that rebates paid under the NSA in a given year would not affect the Annual Revenue Growth Threshold.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

QUESTION 8: The following table compares the Discover Fiscal Year volumes for FY 2012 and FY 2013 provided by the Postal Service in the data collection reports for the Docket No. R2011-3 (*i.e.*, the prior Discover negotiated service agreement) and the information provided in the current dockets in the workbook titled "DFS 2014 NSA Financials.xls." Please reconcile the apparent discrepancies.

	R2015-2 Data			R2011-3 Data	
	2012	2013		2012	2013
First-Class Mail Letters	212,566,074	208,651,830		214,751,827	213,528,996
Standard Mail Letters	981,295,363	1,033,178,685		955,827,828	1,036,465,402
Total DFS	1,193,861,437	1,241,830,515		1,170,579,655	1,249,994,398
Source:					
FY12-PRC-LR-6 "ACR_NSA_FY12_report PRC.xls" tab MC2011-19 Discover NSA cells E61, E62					
FY13-PRC-LR-6 "ACR_NSA_FY13_report PRC.xls" tab MC2011-19 Discover NSA cells E63, E64					

RESPONSE 8: The bulk of the differences between the annual data labeled R2015-2 and R 2011-3 is best explained in that they are referencing differing time periods. Discrepancies between annual data labeled R2015-2 Data and R2011-3 Data can be reconciled through the summation of different 12-month periods as follows:

Header Description	Year	Time Period
R2015-2 Data	Calendar	January - December
R2011-3 Data	Fiscal	October - September

Other discrepancies are due to limitations of Postal Service volume tracking systems whereby certain segments of a customer's mail volume are not visible to us. These volumes are verified through affidavits provided by third-party vendors preparing the volume.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

QUESTION 9: The following table details the Postal Service's estimate of incremental volume for contract years 1-3 (as provided in the workbook "DFS Appendix") and the elasticity implied by these estimates.

		Contract Year 1	Contract Year 2	Contract Year 3
	<u>Before-Rates Volume</u>			
a	First-Class Mail	201,009,500	193,974,168	187,185,072
b	Standard Mail	828,784,277	780,714,789	735,433,331
	<u>Incremental Volume</u>			
c	First-Class Mail	31,621,918	41,579,390	48,368,487
d	Standard Mail	194,796,365	255,723,302	301,004,761
	<u>Percent Volume Change</u>			
e=c/a	First-Class Mail	15.7%	21.4%	25.8%
f=d/b	Standard Mail	23.5%	32.8%	40.9%
g	Rebate Percentage	2.5%	2.5%	2.5%
	<u>Implied Price Elasticity</u>			
h=e/g	First-Class Mail	-6.29	-8.57	-10.34
i=f/g	Standard Mail	-9.40	-13.10	-16.37

a. Please confirm the implied elasticities listed above accurately reflect the data provided by the Postal Service.

b. If part a is confirmed, please provide additional justification supporting the deviation of these elasticities from the subclass elasticities. If part a is not confirmed, please calculate and provide justification for implied elasticities for each year of the Discover negotiated service agreement.

RESPONSE 9:

a. The Postal Service confirms that the above-referenced implied elasticities accurately reflect the data provided.

b. We do not believe the elasticities assumptions posited in the Commission's analyses are supported by the behavior of the mailers in general or of Discover.

Please see the Response to Question 3.c.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

QUESTION 10: 39 C.F.R. § 3010.42(f)(3) requires the Postal Service to file an analysis of the effects of the Agreement on the contribution to institutional costs from mailers who are not party to the Agreement. Please identify the location in the Postal Service's Request where this information is provided. If such information has not been provided, please supplement the Request to conform to this requirement.

RESPONSE 10: The Postal Service expects the contribution from mailers not party to the NSA will not change as a result of this Agreement; thus, no analysis was provided. However, as presented in the "value" tab of DFS_NSA_Financials (Attachment F).xlsx, and discussed in the Financial Analysis section of the Postal Service's Notice pleading, the Postal Service estimates this NSA is expected to generate approximately \$115.7 million in incremental contribution from additional business (primarily advertising mail) with DFS over its three-year term. By offering predictable postage rebates in return for firm commitments to increase postage revenue, the Postal Service believes that not only can it induce DFS to continue to rely upon mail as a viable and valuable marketing and communications medium, but also that this NSA will drive accelerated growth in DFS Eligible Mail.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

QUESTION 11: 39 C.F.R. § 3010.42(h) requires that the Request provide details regarding any and all actions (performed or to be performed) to assure that the Agreement will not result in unreasonable harm to the marketplace. Please identify the location in the Postal Service's Request where this information is provided. If such information has not been provided, please supplement the Request to conform to this requirement.

RESPONSE 11: With respect to 39 C.F.R. § 3010.42(h), and as described in NSA Attachment E (Statement of Supporting Justification), the Postal Service believes the NSA will not cause unreasonable harm to the marketplace as it does not substantially alter the degree to which SM and FCM prices address many of the factors of section 3622(c) and as the Postal Service stands ready to negotiate and implement functionally equivalent deals with similarly-situated mailers so that there will be no unreasonable harm to the marketplace from a competitive advantage granted solely to Discover. As stated in *Newspaper Association of America v. Postal Rate Commission*,⁴ the court, in applying the rational basis test to the Commission's interpretation of the meaning of "unreasonable harm to the marketplace"⁵ found that, "so long as that meaning is rational and one the statutory language can bear", it must defer to the Commission. As the Commission concluded that "harm to the marketplace was "unreasonable" only if it was the result of anticompetitive pricing" (e.g., pricing below cost) and that "it was not obligated to protect individual competitors of the Parties to the Agreement from the harms of fair competition . . . , as long as the Postal Service is not pricing its products below costs to drive its competitors out of the business, it is not creating an

⁴ *Newspaper Association of America v. Postal Rate Commission*, No.12-1367 (D.C. Cir. 2013), available at [http://www.cadc.uscourts.gov/internet/opinions.nsf/1FFFEF0188407A485257C240054FBA2/\\$file/12-1367-1466329.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/1FFFEF0188407A485257C240054FBA2/$file/12-1367-1466329.pdf).

⁵ *Ibid* at 11-12, citing *Capital Network Sys. v. FCC*, 28 F.3d 201, 204 (D.C. Cir. 1994).

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

unreasonable level of harm in the marketplace.”⁶ As in the case of Valassis Direct Mail,⁷ this NSA does not create an unreasonable level of harm in the marketplace. In addition, the Commission is “not obligated to protect individual competitors of the Parties to the Agreement from the harms of fair competition”.⁸

⁶ Ibid.

⁷ Dkt. MC2012-14, at 27 (Postal Regulatory Comm’n Aug. 23, 2012) (order) [hereinafter “Order No. 1448”], available at http://www.prc.gov/Docs/85/85014/Order_No_1448.pdf.

⁸ Ibid. The Court also noted in Order No. 1448, that fair competition is good for consumers even when it leads to “injury inflicted upon rivals.” Citing Robert H. Bork, *The Antitrust Paradox* 136-44 (1978).

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

QUESTION 12: 39 C.F.R. § 3010.43 details the minimum requirements for the Postal Service's data collection plan and data reporting during the negotiated service agreement's term. 39 C.F.R. § 3010.43(b) requires that the data report under the plan is filed "60 days after each anniversary date of implementation." In addition, 39 C.F.R. § 3010.43(b) describes the minimum requirements for the data report. Please explain how the data collection plan presented in Attachment D to the filing conforms to the requirements of 39 C.F.R. § 3010.43. If necessary, please revise the proposed data collection plan for the Agreement.

RESPONSE 12: 39 C.F.R. § 3010.43 requires the Postal Service to provide "a plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. 3622(c)(10)." By providing actual volumes, revenues, rebates, and the calculations performed to determine those rebates, the Postal Service will have provided all the available data information to be used (along with system-wide unit cost estimates) to estimate a value for the agreement. The Postal Service will file its report within sixty (60) calendar days after each anniversary date of implementation. The ninety (90)-day deadline contained in the Postal Service's Notice was a typographical error. The period specified in the data collection plan presented in NSA Attachment D has been revised from 90 days to not later than sixty (60) calendar days. A revised Attachment D is submitted herewith.

The Postal Service respectfully emphasizes the importance of an expeditious determination in this instance. DFS must perform several key activities and make significant investments in order to implement this NSA by December 1, 2014 or as soon thereafter as possible. These business activities and investments cannot begin prior to regulatory approval of the NSA. Both DFS and the Postal Service want to avoid any

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1

unnecessary delay that may threaten the ability of the parties to implement this agreement.

Attachment D (Revised 11/13/14)

**DISCOVER FINANCIAL SERVICES (DFS) NSA
DATA COLLECTION PLAN**

Not later than 60 calendar days after the end of each contract year, the Postal Service shall provide to the Postal Regulatory Commission a report of:

1. The rebate paid to or penalty paid by DFS (if any) and the calculations underlying their determination.
2. Calculation of the change in net financial position of the Postal Service as a result of the DFS NSA, using the Commission's methodology. 39 C.F.R § 3010.43(b)(1)
3. DFS Specific costs, volumes, and revenues by qualifying price category for the contract year. If DFS specific costs are not available, the source and derivation of the costs that are used shall be provided, including a discussion of the currency and reliability of these costs, and their suitability as a proxy for mailer-specific costs.
39 C.F.R. § 3010.43(b)(1)(A),(C)
4. An analysis of the effects of the Agreement on the net overall contribution to the institutional costs of the Postal service. .39 C.F.R. § 3010.43(b)(1)(B)
5. A discussion of the changes in operations of the Postal Service that result from the Agreement. 39 C.F.R. § 3010.43(b)(2)
6. An analysis of the impact of the agreement on the marketplace, including a discussion of any and all actions taken to protect the marketplace from unreasonable harm. 39 C.F.R. § 3010.43(b)(3)
7. A list of all (if any) DFS's acquisitions and divestitures that occurred during the contract year, and the volumes and threshold impacts associated with any such acquisitions or divestitures.